GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 13967, of the California Steak House, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Administrator of Licenses and Permits of the Department of Licenses, Investigations and Inspections (now the Acting Administrator of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs), dated March 24, 1983, revoking Certificate of Occupancy No. B43557 in a C-4 District at premises 831 - 14th Street, N.W., (Square 250, Lots 810 and 811).

HEARING DATES: May 25 and June 16, 1983
DECISION DATE: July 7, 1983

FINDINGS OF FACT:

1. The appeal was first scheduled for the public hearing of May 25, 1983. Because of the lateness of the hour, the Chair continued the appeal to the public hearing of June 16, 1983.

2. The subject property is located on the east side of 14th Street between H and I Streets and is known as premises 831 14th Street, N.W. The site is located in a C-4 District.

3. The subject site is improved with a two story structure which houses an establishment known as the California Steak House.

4. Square 250 Associates is the owner of the subject premises, and is a party to the appeal pursuant to the Supplemental Rules of Practice and Procedure. The California Steak House, Inc. the appellant herein, is the lessee of the subject premises.

5. The appellant was issued a certificate of occupancy for the use of the subject premises as a restaurant on July 29, 1959. The certificate of occupancy was in effect and had never been revoked up until the time of the decision which is the subject of this appeal. The appellant currently operates with a Class "C" retailers license issued by the Alcoholic Beverage Control Board of the District of Columbia.

6. The Zoning Commission, by Order No. 188, dated December 16, 1977, amended the Zoning Regulations to define a "sexually oriented business establishment" and to regulate the location of such establishments.

7. The Regulations as amended prohibit sexually-oriented business establishments in any zoning district except C-3-B and C-4 and permit such establishments in those two districts only as a special exception with the approval of the Board of Zoning Adjustment subject to the conditions listed in Paragraph 5103.47 of the Zoning Regulations. By Order No. 308, dated May 8, 1980, all property then zoned C-3-B was redesignated C-3-C, and all existing references to C-3-B were changed to C-3-C.

8. On May 10, 1982, Stephen A. McCarthy, Acting Chief, Zoning Inspection Branch, Department of Housing and Community Development, sent a letter to Quy Huy Nguyen, c/o California Steak House, stating his conclusion that the subject premises was "being operated as a sexually-oriented business establishment without a proper certificate of occupancy." The letter further stated that "This is a violation of the D.C. Zoning Regulations." After advising as to how to file with the Board of Zoning Adjustment for permission to operate a sexually oriented business establishment, the letter stated: "You are further cautioned, that the filing of an appeal does not dismiss the technicality of the violation, therefore a reinspection of the violation will be made. If you are found to still be operating in violation of the D.C. Zoning Regulations, your case will referred for appropriate action without further notice to you." The letter advised as to how to obtain further information or clarification.

9. On December 21, 1982, Stephen A. McCarthy, Chief of the Zoning Inspection Branch of the Department of Licenses, Investigations and Inspections, sent a letter to Abdolali Mehraz, President, California Steak House, Inc. That letter again concluded that the subject premises "is being used as a "sexually oriented business establishment" without a proper Certificate of Occupancy." In all other circumstances, the letter was essentially the same as the letter of May 10, 1982, described in Finding of Fact No. 8.

10. On March 24, 1983, Donald Murray, Administrator, Office of Licenses and Permits, Department of Licenses, Investigations and Inspections, sent a letter to Abdolali Mehraz, President, California Steak House, Inc. as follows:

> "In accordance with the provision of the D.C. Building Code, Title 5A-1, Section 110.6, 1972 Edition, published on September 21, 1977, and Rules of Procedure published in 29 DCR 4838 (October 29, 1982), Section VIII, the Department of Licenses, Investigations and

Inspections of the Government of the District of Columbia hereby gives you notice that the Department revokes your Certificate of Occupancy No. B43557 issued October 31, 1963, for the premise located at 831 14th Street, N.W."

11. The basis for the proposed action was set forth in the letter as follows:

"Charge 1.Violation of D.C. Zoning Regulations, May 12, 1958 Edition (containing amendments through January 1, 1979), Section 8104.1, Certificate of Occupancy which states that "no person shall use any structure, land or part thereof for any purpose, other than a one family dwelling, until a Certificate of Occupancy has been issued to such person stating that such use complies with these regulations and the building code".

Specification A. On April 28, 1982, Mr. Thomas Farah, Zoning Inspector, Office of Building and Zoning Regulations, D.C. Government conducted an inspection of the California Steak House, 831 14th Street, N.W., and revealed that a sexually oriented business was being operated (a girl was dancing nude on a stage at the location) without a valid Certificate of Occupancy.

Specification B. On November 19, 1982, Mr. Thomas Farah, Zoning Inspector, Office of Building and Zoning Regulations, D.C. Government conducted a second inspection of the California Steak House, 831 14th Street, N.W., and revealed that a sexually oriented business was being conducted (two females, one scantily clad and the other nude were dancing on stage at the location) without a valid Certificate of Occupancy.

Specification C. On November 30, 1982, Vacylla Williams, Investigator, Department of Licenses, Investigations and Inspections visited the California Steak House, 831 14th Street, N.W., and observed a sexually oriented business being operated (two females were dancing in the nude on stage at the premises) without a valid Certificate of Occupancy."

12. The letter requested Mr. Mehraz to surrender Certificate of Occupancy No. B43557 immediately. He was advised of his rights to appeal the action taken by the Department of Licenses, Investigations and Inspections by filing an appeal with the Board of Zoning Adjustment.

13. On March 31, 1983, the appellant filed an appeal with the BZA from the decision of the Administrator of the Office of Licenses and Permits revoking the appellant's certificate of occupancy.

14. On April 15, 1983, the Acting Administrator of the Building and Land Regulations Administration, Department of Consumer and Regulatory Affairs, sent a letter to Mr. Abdolali Mehraz. That letter referenced the March 24, 1983, letter of Mr. Murray as "the proposed action of this agency to revoke your Certificate of Occupancy No. B43557 for the premises located at 831 14th Street, N.W." The April 15, 1983, letter of Mr. Lee stated that it was a "final notice of revocation" of the certificate of occupancy, and ordered that the operation of a sexually oriented business at 831 14th Street, N.W. be ceased.

15. Section 1202 of the Zoning Regulations defines a "sexually-oriented business establishment" as:

> "Sexually-oriented business establishment: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials and articles or an establishment which presents as a substantial or significant portion of its activity, live performances, films, or other material which are distinguished or characterized by their emphasis on matters depicting, describing or related to specified sexually activities and specified anatomical areas. Such establishments may include, but are not limited to, bookstores, newsstands, theaters and amusement enterprises. If an establishment is a sexually oriented business establishment, as defined herein, it shall not be deemed to constitute any other use permitted under the authority of these Regulations."

16. "Specified sexual activities" are defined in Section 1202 as follows:

> "Specified sexual activities: Activities as follows:
>
> 1. Acts of human masturbation, sexual intercourse, sexual stimulation or arousal, sodomy or beastiality.
>
> 2. Fondling or other erotic touching of human genitals, pubic region, buttock or breast."

17. "Specified anatomical areas" are defined in Section 1202 as follows:

> "Specified anatomical areas: Parts of the human body as follows:
>
> 1. Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

2. Human genitals in a discernibly turgid state, even if completely and opaquely covered."

18. Prior to the public hearing, the property owner, Square 250 Associates, submitted to the Board a Motion to Dismiss the Appeal for Lack of Jurisdiction. The basis for the motion was that:

(A) The appeal was not timely filed;

(B) The appeal was barred by the doctrine of laches; and

(C) The Board was without jurisdiction to decide upon the constitutionality of the provisions of the Zoning Regulations.

At the public hearing of June 16, 1983, the property owner moved that it be allowed to withdraw parts (A) and (B) of the Motion to Dismiss relating to timeliness and laches. The Board, by unanimous vote, granted the property owner's motion to withdraw. The Board did not specifically rule on the portion of property owner's motion concerning the jurisdiction of the Board to declare a Zoning Regulation unconstitutional, but recognized that it had no such jurisdiction.

19. The Board, sua sponte, then requested that the appellant address the issue of timeliness. As to the issue of timeliness the appellant argued that the appeal was filed seven days after the letter of revocation of the certificate of occupancy. The letter revoking the certificate of occupancy was dated March 24, 1983. The appeal was filed March 31, 1983. The appellant argued that at no time prior to the March 24, 1983, letter did any agency of the D.C. Government with the power to revoke the certificate of occupancy either revoke the certificate of occupancy or propose to revoke the certificate of occupancy. The previous notices of May 10, 1982, and December 21, 1982, were both from an inspector of the Zoning Inspection Branch. The inspector did not have the power to revoke the certificate of occupancy. In addition, the two notices did not provide any specifications as to what was found on the subject premises. There were only conclusions in both notices that a sexually oriented business establishment was found operating in the subject premises. Further, the appellant argued, the December 21, 1982, letter was ambiguous in that the second-to-last paragraph says "If you are found to be using the subject premises in violation of the D.C. Zoning Regulations, your case will be referred for appropriate action without further notice to you." The appellant submitted that the December 21, 1982, letter was not a clear statement that the appellant was even in violation. The first paragraph appeared to indicate that he

was in violation. The second-to-last paragraph references an "if" he was found to be in violation. In summary, the appellant contended that until the March 24, 1982, letter, there was no final appealable decision. The appellant contended that there was no aggrieved party and that the earlier notices of May 10, 1982, and December 21, 1982, were violation notices which did not have the effect of making the appellant an aggrieved party under the Rules of the BZA.

20. The Chair deferred a ruling on the question of timeliness until the merits of the appeal were heard, as to whether the Administrator of the Office of Licenses and Permits of the Department of Licenses, Investigations and Inspections was correct in revoking the appellant's certificate of occupancy because of his determination that the appellant was operating a sexually oriented business establishment.

21. The appellant presented no testimony, evidence or witnesses on its behalf.

22. The appellant stipulated to the specifications contained in the decision letter of March 24, 1983, and that the establishment presented live nude dancing as a substantial or significant portion of its activity.

23. The appellant argued that for an establishment featuring live nude entertainment to be classified as sexually-oriented, it must be shown that the nude entertainers engage in the specified sexual activities outlined in the Regulations and that the activities are presented as a substantial or significant portion of the activity in the establishment. The appellant further argued that the language "acts of ... sexual stimulation or arousal," contained in the definition of specified sexual activities, refers to some kind of touching or direct physical stimulation of a person by himself or herself or by another person.

24. It was the appellant's contention that "acts of sexual stimulation or arousal" was intended to include only direct physical stimulation of a human being by himself or herself or by another human being. While the language "fondling or other erotic touching of human genitals, public region, buttocks or breast" in part 2 of the definition of specified sexual activity unquestionably includes the sexual stimulation or arousal of those areas by hands, fingers, or other parts of the human body, it does not encompass acts of direct physical sexual stimulation or arousal by inanimate objects or devices. The language in part 1 of the definition of specified sexual activities was intended to cover such behavior.

25. The appellant concluded that there was no evidence in the record that entertainers on the appellant's premises engaged in acts of human masturbation, sexual intercourse, sodomy, beastiality, or fondling or other erotic touching of human genitals, pubic region, buttocks or breast. The appellant concluded that there is at most only minimal evidence of acts of sexual stimulation or arousal and that such evidence is insufficient to support a conclusion that any such behavior constituted a substantial or significant portion of the activity on the appellant's premises.

26. The Zoning Administrator testified that the decision to revoke the certificate of occupancy was made after procedures were established by the Department of Licenses, Investigation and Inspections, now the Department of Consumer and Regulatory Affairs, to govern such revocations. The Zoning Administrator argued that the inspections and investigations that his office made and that he and others in the Department relied upon confirmed that the business in operation at 831 14th Street, N.W. was a "sexually-oriented business establishment."

27. Thomas Farah, an Inspector with the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, testified as the person who conducted the inspections referred to in Specifications A and B of the decision letter dated March 24, 1983. Mr. Farah testified orally, through gestures and with demonstrations that women, while nude, engaged in dancing and other bodily movements on tables in close proximity to customers. In the course of dancing, the women would lay on the tables with their legs spread apart. They would also lay with their legs extended upward in a kicking fashion. Customers would place money on the tables and the women would turn their backs to the customers, bend over in a manner exposing the anus and vagina to the customers and pick up the money. Also, while dancing, they would move their pelvic areas in the direction of the customers. In addition to the activities engaged in while dancing, each woman, while nude, would walk on the table in a gliding or "sashaying" fashion from customer to customer. Before each customer, she would lay down, rear back and pull her legs back causing the lips of her vagina to part, thereby exposing the inner vaginal area. While so positioned, she would dangle her ankle in the face of the customer. If the customer failed to place a tip in her garter, she moved on to the next customer. If a tip was placed in the garter, she stayed there and "gave him a longer look."

28. Vacylla Williams, the investigator who observed the subject establishment on November 30, 1982, as specified in the letter from Mr. Murray dated March 24, 1983, did not testify at the hearing.

29. Mr. Stephen A. McCarthy, Chief of the Zoning Inspection Branch within the Department of Consumer and Regulatory Affairs, visited the premises on May 3, 1983, after the decision revoking the appellant's certificate of occupancy had been rendered. The Board allowed Mr. McCarthy to testify, but ruled that his testimony would have limited value in the final decision and could only be used to corroborate Mr. Farah's testimony. Mr. McCarthy testified that he was in the appellant's establishment for approximately one and a quarter hours. He corroborated the testimony of Mr. Farah as set forth in Finding No. 27. Mr. McCarthy also testified that the woman moved their pelvic areas in the direction of the customers while the women were dancing. Mr. McCarthy further testified that his visit on May 3, 1983 was a routine matter in all investigations and that it was made to determine a continuing violation existed after the certificate of occupancy had been revoked.

30. The Zoning Administrator testified that the decision to revoke the certificate of occupancy was based on the inspections made on April 28 and November 19, 1982. The determination was not based on the November 30, 1982, and the May 3, 1983, inspections, since the Zoning Administrator did not have those reports before him when he made his decision. After the May 10, 1982, and December 21, 1982, notices were sent, the Zoning Administrator referred the case on January 7, 1983, to the Corporation Counsel for prosecution.

31. The Zoning Administrator further testified that final rulemaking on the rules pertaining to the revocation of certificates of occupancy was effective December 17, 1982. Those rules empowered the District of Columbia to not only seek prosecution through the office of the Corporation Counsel but to take steps to revoke the certificate of occupancy as another means of enforcement. The Zoning Administrator testified that both remedies were utilized in the instant matter.

32. At the time the May 10, 1982, letter was sent, the office of the Zoning Administrator, otherwise known as the Zoning Regulations Division of the Building and Zoning Regulations Administration, was a part of the Department of Housing and Community Development. On July 6, 1982, the entire BZRA was reorganized from the Department of Housing and Community Development into the Department of Licenses, Investigations and Inspections. The letter of December 21, 1982, was again issued from the Zoning Inspection Branch, then part of Department of Licenses, Investigations and Inspections. The Department of Licenses, Investigations and Inspections was reorganized into the Department of Consumer and Regulatory Affairs on March 31, 1983. The March 24, 1983, letter was from Department of Licenses, Investigations and Inspections. The April 15, 1983 letter was from the

Department of Consumer and Regulatory Affairs. The same enforcement process, with different agency names and individuals, was used throughout.

33. The intervenor property owner supported the position of the Zoning Administrator. The intervenor attempted to present testimony and evidence, in the form of reports and statements of private investigators, that purported to corroborate the existence of a "sexually oriented business establishment" at the subject premises. The subject reports were not relied upon by the Zoning Administrator when he made the decision that is challenged in this appeal, and are thus not relevant to the subject matter.

34. There were numerous letters submitted to the record in opposition to sexually oriented businesses, urging the Board to upheld the decision revoking the subject certificate of occupancy. These letters were from community groups, churches and individual citizens. The letters assumed that a restaurant was being operated as a sexually oriented business, before the appeal had been heard and determined by the Board. The Board finds that such letters do not go to the merits of the appeal. The letters do not address the issues presented at the public hearing. The Board, accordingly, can give no weight to the letters.

35. Advisory Neighborhood Commission 2C, within which the property is located, by letter dated May 18, 1983, supported the revocation of the certificate of occupancy. The ANC stated no reasons for its decision, nor did it indicate any issues or concerns for the Board to address. Advisory Neighborhood Commission 3E, by letter received May 20, 1983, and Advisory Neighborhood Commission 2B, by letter dated June 2, 1983, supported the revocation of the certificate of occupancy and indicated that they believed that nude dancing as carried out in this establishment included matters emphasizing both specified anatomical areas and specified sexual activities. That is the main issue of the appeal and is addressed in the conclusions of law. Advisory Neighborhood Commission 3A, by letter dated June 3, 1983, opposed the appeal and stated that it was concerned that granting of the appeal would allow "neighborhood strip joints as a matter of right under zoning." In this case, the Board is determining whether the revocation of the subject certifiacte of occupancy is proper. That issue is addressed in the conclusions of law.

36. On June 29, 1983, the owner of the subject property filed a motion requesting the Board to waive its Rules and reopen the record and require further hearing on designated issues. The Board, at its public meeting held on July 6, 1983, determined that there was no good cause demonstrated and declined to waive its rules to permit consideration of the motion.

CONCLUSIONS OF LAW AND OPINION:

Before addressing the merits of the appeal, the Board is faced with the jurisdictional question of whether the appeal was filed in a timely manner. The Supplemental Rules of Practice and Procedure before the Board do not set a specific time limit following a decision within which an appeal must be filed. Because appeals may be filed by persons who are aggrieved by a decision who are not applicants for permits or who are not directly notified of the decisions, it is possible that an appellant may not know of a decision until some other action has occurred, such as the beginning of construction or the opening of a use.

Although this Board has set no specific limit for the filing of appeals, it has held that appeals filed seven to nine months after the Zoning Administrator's action are untimely. See Orders of the Board in Appeal of Sheridan Kalorama Neighborhood Council, BZA Appeal No. 11872 February 14, 1975 (eight month delay); Appeal of Arthur H. Fawcett, Jr., BZA Appeal No. 11158 July 22, 1976 (seven month delay); and Appeal of Christian Embassy, Inc., BZA Appeal No. 12142 (June 18, 1976) (nine month delay). In the subject appeal, the appellant is appealing from an action of which it had direct knowledge. The appellant had knowledge since the first notice of May 10, 1982, of the determination of the Zoning Inspection Branch that the subject premises was being operated as a sexually-oriented business establishment without a proper certificate of occupancy. The second notice dated December 21, 1982, advised the appellant of the same determination. In both notices, the appellant was advised that if it wished to continue such use it must file an application with the BZA and seek the Board's approval. In both notices, the appellant was advised that it was in violation. In both notices, the appellant was advised that a reinspection would be made to determine if the violation was of a continuing nature. In both notices, the appellant was advised in the first paragraph of the notices that the determination was based on recent field inspections by representatives of the Zoning Inspection Branch. In both notices, the appellant was advised that if it wished to obtain further information, it could call specified telephone numbers during specified hours.

The appellant argued that it is appealing the decision revoking its certificate of occupancy, of which it first received notice by the March 24, 1983, letter, and that the two earlier letters do not constitute an appealable decision. The Board disagrees. The revocation of the certificate of occupancy relies on the same factual basis set forth in the first two letters; i.e., the appellant was operating a sexually oriented business establishment. While the Board is greatly disturbed that the appropriate enforcement agencies of the District of Columbia did not more

promptly and diligently follow-up the first notice of violation sent on May 10, 1982, the Board can reach no other conclusion than that the appellant, the California Steak House, Inc., knew from the letter of May 10, 1982, that the District of Columbia considered its use to be in violation. The letter is clear on its face to that effect.

The May 10, 1982, letter, as well as the December 21, 1982 letter, is further clear on its face that the District intended to follow-up on its initial actions, and to reinspect the premises to see if the violation continued. As testified to by the Chief of the Zoning Inspector Branch, that is standard operating procedure. The letters clearly advise the appellant that the District of Columbia would take further "appropriate action" if it found the violation to continue, without specifying what those actions might be. While the Board agrees that it is unclear what the Department might do, the Board concludes that a reasonable person receiving the letter should have reasonably understood that the Department had found the existing use to be in violation, and that some possible action to enforce the Regulations or impose a penalty might be taken.

In response to the May and December letters, the appellant did nothing. There was no attempt made to contact appropriate officials of the District of Columbia for information or an explanation. There was no appeal filed until March 31, 1983, approximately ten and one half months after the May 10, 1982, letter and more than three months after the December 21, 1982, letter. The speed with which the appellant filed after receiving the March 24, 1983, letter indicates that it could have acted promptly in regard to the earlier letters. It chose not to. The Board concludes that the appeal was not timely filed, and therefore that it should be dimissed on that grounds.

Even if the appeal could be considered as timely filed, because the merits of the case were thoroughly considered, the Board concludes that the decision to revoke the certificate of occupancy was properly made, and that the appeal should be denied on that basis as well. Before addressing the principal questions on the merits, the Board notes two issues that were raised:

1. The appellant argued that the March 24, 1983, letter revoking the certificate of occupancy was invalid because it did not give the appellant ten days notice of proposed action to revoke. That defect was cured by the April 15, 1983, letter from Douglas Lee. Additionally, the Board notes that the District of Columbia has not to this point acted to force the closing of the subject business. The appellant has been given all reasonable and required due process rights.

2. The appellant, in its statement in support of the appeal, argued that the Zoning Regulations as to sexually oriented business establishment were unconstitutional on several grounds. The Board is limited by statute to hearing appeals as to the administration and enforcement of the Zoning Regulations (D.C. Code, Section 5-424(g)1, 1981 Ed.). The Board is further precluded by statute from amending any regulations or map (D.C. Code, Section 5-424(e), 1981 Ed.). The Board does not have the authority to declare unconstitutional any provisions of the Zoning Regulations. That authority lies with the courts of the District of Columbia and the appellant must seek relief through the courts if it desires to pursue that avenue of attack.

In addressing the merits of the appeal, the Board must determine whether the officials of the District of Columbia who ruled on this matter properly interpreted and applied the provisions of the Zoning Regulations. If the subject business does fall within the definition of a "sexually oriented business establishment," then the District was correct in revoking the certificate of occupancy.

A "sexually oriented business establishment", according to Section 1202 of the Zoning Regulations, is one "which presents as a substantial or significant portion of its activity, live performances, ... which are distinguished or characterized by their emphasis on matters depicting, describing or related to specified sexual activities and specified anatomical areas." As related to this appeal, the critical issues were:

1. Whether the activities described constituted a "substantial or significant portion" of what occurs at the subject premises; and

2. Whether both "specified sexual activities" and "specified anatomical areas" had to occur, or whether areas alone was sufficient.

As noted in Finding of Fact No. 22, the appellant stipulated that live nude dancing constituted a substantial or significant portion of its activity. Whether that dancing also constitutes a specified sexual activity will be discussed in detail below.

As to the second issue, the Board concludes that the use of the conjunction "and" in the definition of "sexual oriented business establishment" requires that both specified activities and specified areas be found in order for an establishment to fall within the definition. The Zoning Administrator did not dispute this point, and presented his

response to the appeal so as to indicate that he applied the definition to require the presence of both "activities" and "areas."

There is no dispute from the record that the live performances presented included displays of "specified anatomical areas," as defined in Section 1202. The Board must then determine whether the activities observed by the District's inspectors, which served as a basis for the challenged revocation, are "specified sexual activities" within the meaning of Section 1202. That definition is set forth in full in Finding of Fact No. 16. The issue before the Board is how to apply the term "sexual stimulation or arousal." It is clear from the record that in the subject case there was no masturbation, sexual intercourse, sodomy, beastiality or fondling or other erotic touching.

The appellant argued that "sexual stimulation or arousal" refers to some kind of touching or direct physical stimulation of a person by himself or herself or by another person. The Board disagrees. As the definition is structured, "fondling or other erotic touching" is a separately identified activity. If the Zoning Commission meant that "sexual stimulation or arousal" had to include touching, there would have been no need to separately identify it on the list of activities.

Based on the findings of fact, the evidence of record and the testimony of inspectors of the District of Columbia Government, the Board concludes that the type of activity observed occurring at the subject premises did constitute "sexual stimulation or arousal" and was therefore a "specified sexual activity." The activities described in Finding of Fact No. 27, as corroborated by the observations presented in Finding of Fact No. 29, clearly go beyond the limits of dancing in the nude. The positions assumed by the women and the manner in which the women displayed themselves are clearly designed to stimulate or arouse patrons of the establishment, and in and of themselves do constitute a "specified sexual activity."

The Board thus concludes that the District of Columbia Government committed no error in its determination that the subject establishment is a "sexually oriented business establishment," and was therefore operating without a proper certificate of occupancy. The prior restaurant certificate of occupancy was no longer valid because the restaurant use no longer existed. The Board concludes that the revocation of the certificate of occupancy was proper.

In consideration of all of the foregoing Findings of Fact and Conclusions of Law, it is therefore hereby ORDERED that the appeal is DISMISSED as UNTIMELY filed and DENIED on the basis that the revocation of the certificate of

occupancy was proper. Accordingly, the decision of the Administration of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs is UPHELD.

VOTE: 5-0 (Carrie Thornhill, Walter B. Lewis, William F. McIntosh, Douglas J. Patton and Charles R. Norris, to DISMISS as UNTIMELY filed and to DENY on the Merits).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: NOV 22 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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